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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,836	07/07/2004	Lourens George Bordewijk	2001-1343	8388

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EXAMINER
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LUKS, JEREMY AUSTIN

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/500,836	BORDEWIJK, LOURENS GEORGE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jeremy Luks	2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 12 and 15-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12 and 15-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 17 and 18 recite the limitation, "on said one side". There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 12, 15, 16, 19-27 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ambrose (4,852,177) in view of Levin (6,144,750). Ambrose teaches a hearing aid (Figure 9) to be placed in the auditory canal of a patient (Col. 3, Lines 11-13), the hearing aid comprising a standard part (Figure 6, 11) to be fitted near an outside of an auditory canal, the standard part (11) usable for both left and right ears of a patient, and enclosing a microphone (Figure 10, #15), an amplifier (Figure 11, #6), a loudspeaker (5) (Col. 3, Lines 27-30) and a battery compartment (Col. 5, Lines 45-49), and a dedicated part (1) to be fitted in the auditory canal facing an eardrum of a patient (Col. 3, Lines 11-13), the dedicated part (1) being adapted to specific geometry of the auditory canal of the patient (Col. 2, Lines 13-18), the dedicated part being providing with sound transmission means (Figure 8, #13) for the transmission of sound from said loudspeaker (5) into the auditory canal, the sound transmission means (13) being

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adapted to the specific geometry of the auditory canal of the patient (Col. 2, Lines 26-28), and the dedicated part having a central axis forming an angle between ten degrees and forty five degrees with respect to a central axis of the standard part (See angle in Figure 12); wherein the dedicated part (1) is an internal part and the standard part (11) is an external part, and the internal part comprises a connecting part (4) connecting the internal part to the external part, and the standard part (11) accommodates all the electronics and a battery (Col. 5, Lines 45-49), the electronics comprising a microphone (15), an amplifier (6), and a loudspeaker (5) within an enclosed volume (enclosed in part #11); and wherein the dedicated part (1) is provided with means (Figure 13, #23) for removing it from the ear. Ambrose fails to teach the standard part being made of rigid plastic, having a symmetrically oval shape, and being provided with injection molded means for removing said hearing aid from the auditory canal, wherein the removing means is a pull rod connected to the standard part housing, the standard part having an outer end face provided with a sound aperture for said microphone, said sound aperture being located in the center of the outer end face. Levin teaches a standard part (Figure 2, #30) being made of rigid plastic (Col. 3, Lines 15-20), having a mirror symmetrically oval shape in an end view, and being provided with a pull rod (38) means connected to the standard part (30) housing for removing said hearing aid from the auditory canal (Col. 2, Lines 42-44), the standard part (30) having an outer end face provided with a sound aperture (36) for a microphone (Col. 2, Lines 44-46), said sound aperture (Figure 24, #36) being located in the center of the outer end face (outer face of plate #30). Levin fails to teach wherein the means for removing comprises an injection-molded part;

however, the method of forming a device is not germane to the issue of patentability of the device itself. Therefore, this limitation has been given little patentable weight.

3. Claims 17, 18, 28 and 29 rejected under 35 U.S.C. 103(a) as being unpatentable over Ambrose (4,852,177) in view of Levin (6,144,750) as applied to claims 12 and 24 above, and further in view of Juneau (6,228,020). Ambrose and Levin are relied upon for the reasons and disclosures set forth above. Ambrose and Levin fail to teach wherein the outer end face is provided with switching means on said one side and a connector means or adjustment facility on said one side; and wherein the microphone sound aperture is located intermediate the switch and the adjusting facility. Juneau teaches an outer end face (Figure 8, #22) provided with switching means (27) and a connector means or adjustment facility (28); and wherein a microphone sound aperture (25) is located near the switch (27) and the adjusting facility (28). Juneau fails to teach wherein a microphone sound aperture is located intermediate the switch and the adjusting facility. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to arrange the microphone sound aperture intermediate the switch and the adjusting facility, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 12, and 15-30 have been considered but are moot in view of the new ground(s) of rejection. The Examiner affirms that the obvious combination of Ambrose, Levin and Juneau teach all of the limitations claimed by Applicant

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy Luks whose telephone number is (571) 272-2707. The examiner can normally be reached on Monday-Thursday 8:30-6:00, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeremy Luks  
Patent Examiner  
Art Unit 2837



LINCOLN DONOVAN  
SUPERVISORY PATENT EXAMINER